

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS F. GREEN,

Petitioner,

-v-

WILLIAM LEE, Superintendent of Green
Haven Correctional Facility,

Respondent, and

THE ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Additional Respondent.

X
)
CV)
, 1)
Index No.

5796

SPATT, J.

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
NOV 26 2012

X

APPENDIX OF EXHIBITS
TO PETITION FOR A WRIT OF HABEAS CORPUS

RONALD L. KUBY [RK-1879]
LEA SPIESS [LS-7866]
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, New York 10011
(212) 529-0223

For Petitioner Thomas F. Green

Dated: New York, New York
November 21, 2012

INDEX TO EXHIBITS

- Exhibit A *People v. Thomas F. Green*, Suffolk County Indictment 1169/2007
- Exhibit B Decision & Order, Hon. Barbara Kahn, dated June 29, 2009, denying Petitioner's CPL § 330.30 Motion
- Exhibit C Decision & Order, Hon. Barbara Kahn, dated Dec. 14, 2009, denying Petitioner's CPL § 440.10 Motion
- Exhibit D Decision & Order, Hon. Reinaldo E. Rivera, dated April 7, 2010, denying Petitioner's application for leave to appeal the denial of his CPL § 440.10 motion to the Appellate Division, Second Department
- Exhibit E Decision & Order of the Appellate Division, Second Department, dated Feb. 21, 2012, affirming Petitioner's conviction on direct appeal
- Exhibit F Order, Hon. Susan Phillips Read, dated June 29, 2012, denying Petitioner leave to appeal the affirmance of his conviction to the New York Court of Appeals
- Exhibit G Reproduction of People's Exhibit 18 at trial, "the Halloween photograph"
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit H Reproduction of People's Exhibit 32 at trial, "the Coney Island photograph," with an enlarged copy of the serial number on the reverse of the photograph
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit I Letter from Marianne Dilman, Polaroid Corporation, dated Nov. 4, 2008
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit J Affidavit of Cindy Green, dated January 17, 2009
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit K Trademark, Principal Register, Princess University,
United States Patent and Trademark Office, Reg. No. 2,692,342
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions

- Exhibit L** Affirmation of David Pressman, dated Dec. 21, 2008
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit M** Affidavit of Thomas Green, Jr.
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit N** United States Patent and Trademark Office, Reg. No 2,34,765,
Trademark, Principal register, "Turbo Twist," Scott Baldwin,
Examining Attorney
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit O** Documentation of First Episode of Law & Order: Special Victims
Unit
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit P** Affirmation of Paul Gianelli, dated January 26, 2009
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions
- Exhibit Q** Affidavit of Jay Salpeter, dated January 17, 2009
Submitted as an exhibit to Petitioner's 330.30 and 440.10 motions

Exhibit A

SUPREME COURT: SUFFOLK COUNTY

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

INDICTMENT

-against -

THOMAS F. GREEN,

Case Number 1169-2007

Defendant.

-----X

VF COUNT ONE: SODOMY IN THE FIRST DEGREE
VF COUNT TWO: SODOMY IN THE FIRST DEGREE
VF COUNT THREE: ATTEMPTED SODOMY IN THE FIRST DEGREE
VF COUNT FOUR: SEXUAL ABUSE IN THE FIRST DEGREE
VF COUNT FIVE: SEXUAL ABUSE IN THE FIRST DEGREE
VF COUNT SIX: SEXUAL ABUSE IN THE FIRST DEGREE
VF COUNT SEVEN: SEXUAL ABUSE IN THE FIRST DEGREE
VF COUNT EIGHT: SEXUAL ABUSE IN THE FIRST DEGREE
COUNT NINE: SEXUAL ABUSE IN THE SECOND DEGREE
COUNT TEN: SEXUAL ABUSE IN THE SECOND DEGREE

JOHN CORR
FOREPERSON

ELAINE HYLTON KERR
ASSISTANT FOREPERSON
MARCH/APRIL, 2007 GRAND JURY 1A
TERM IV

Thomas J. Spota
THOMAS J. SPOTA
DISTRICT ATTORNEY
SUFFOLK COUNTY

COUNT ONE

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SODOMY IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about and between the end of 1998 and beginning of 1999, in Suffolk County, engaged in deviate sexual intercourse with B.M. a person less than eleven years old whose identity is known to the Grand Jury.

COUNT TWO

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SODOMY IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about and between the end of 1998 and beginning of 1999, in Suffolk County, other than alleged in Count One of this Indictment, engaged in deviate sexual intercourse with B.M. a person less than eleven years old whose identity is known to the Grand Jury.

COUNT THREE

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of ATTEMPTED SODOMY IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about and between the end of 1998 and beginning of 1999, in Suffolk County, with intent to commit the crime of SODOMY IN THE FIRST DEGREE, engaged in conduct which tended to effect the commission of that crime, in that the defendant attempted to engage in deviate sexual intercourse with G.G., a person less than eleven years old whose identity is known to the Grand Jury.

COUNT FOUR

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about and between the end of 1998 and beginning of 1999, in Suffolk County, subjected B.M., a person less than eleven years old, and whose identity is known to the Grand Jury, to sexual contact.

COUNT FIVE

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about the summer of 2003, in Suffolk County, subjected B.P., a person less than eleven years old, and whose identity is known to the Grand Jury, to sexual contact.

COUNT SIX

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring during the summer of 2001, in Suffolk County, subjected S.B., a person less than eleven years old, and whose identity is known to the Grand Jury, to sexual contact.

COUNT SEVEN

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about the summer of 2001, in Suffolk County, subjected S.B., a person whose identity is known to the Grand Jury, to sexual contact by forcible compulsion.

COUNT EIGHT

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

The defendant, on an occasion occurring on or about the summer of 2003, in Suffolk County, subjected K.P., a person whose identity is known to the Grand Jury, to sexual contact by forcible compulsion.

COUNT NINE

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE SECOND DEGREE, committed as follows:

The defendant, on an occasion occurring on or about the summer of 2003, in Suffolk County, subjected K.P., a person less than fourteen years old, and whose identity is known to the Grand Jury, to sexual contact.

COUNT TEN

THE GRAND JURY OF SUFFOLK COUNTY, by this Indictment, accuse the defendant of the crime of SEXUAL ABUSE IN THE SECOND DEGREE, committed as follows:

The defendant, on an occasion occurring on or about the summer of 2003, in Suffolk County, subjected B.M., person less than fourteen years old, and whose identity is known to the Grand Jury, to sexual contact.

SUPREME COURT: COUNTY OF SUFFOLK

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

THOMAS F. GREEN,

SPECIAL INFORMATION FOR
CHILD SEXUAL ASSAULT OFFENDER
PURSUANT TO CPL 200.62

Case Number 1169-2007

Defendant.

-----X

The District Attorney of Suffolk County, Thomas J. Spota, by this Special Information, accuses the defendant, **THOMAS F. GREEN, DOB 11/17/46**, of the crimes of two counts of SODOMY IN THE FIRST DEGREE; one count of ATTEMPTED SODOMY IN THE FIRST DEGREE; five counts of SEXUAL ABUSE IN THE FIRST DEGREE; two counts of SEXUAL ABUSE IN THE SECOND DEGREE committed against a person less than fifteen years old.

DATED: Riverhead, New York
April 16, 2007

Respectfully submitted,

THOMAS J. SPOTA
District Attorney, County of Suffolk

By:

Dana E. Brown
Assistant District Attorney

Exhibit B

COUNTY COURT, SUFFOLK COUNTY
STATE OF NEW YORK

Present: HON. BARBARA KAHN, J.C.C.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

v.
-----X
Indictment No. 01169/2007

Date of Motion: April 29, 2009

THOMAS GREEN

Defendant.

-----X
HONORABLE THOMAS J. SPOTA
District Attorney of Suffolk County
Dana E. Brown, Esq., *of counsel*
Criminal Courts Building
Riverhead, New York 11901

RONALD L. KUBY, ESQ.
Attorney for Defendant
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, New York 10011

Defendant stands convicted of two counts of Sodomy in the First Degree in violation of Penal Law §130.50, Attempted Sodomy in the First Degree in violation of Penal Law §110-130.50, two counts of Sexual Abuse in the First Degree in violation of Penal Law §130.65 and two counts of Sexual Abuse in the Second Degree in violation of Penal Law §130.60, after a jury verdict rendered on August 21, 2008. He now moves, pursuant to Criminal Procedure Law §330.30, for an order setting aside that verdict. In deciding the motion the Court has considered the defendant's notice of motion, affirmation in support and memorandum of law, the People's affidavit in opposition and memorandum of law and the defendant's reply memorandum of law. The motion is determined as follows.

Initially, Criminal Procedure Law §330.30 allows a court, at any time after rendition of a verdict of guilty and before sentence, to set aside or modify the verdict or any part thereof. Specific to this application, the court may set aside the verdict of guilty if "any ground appearing on the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court."

Prior to considering the legal merits of the motion, a short recitation of the operable facts and procedural history giving rise to this application, as culled from the record before the Court, is necessary. As noted earlier the defendant was convicted after a four week jury trial, conducted before this Court, of seven charges related to the sexual abuse of three young girls. The defendant was also acquitted of three charges relating to the alleged sexual abuse of two other young girls.

The criminal acts leading to the convictions for Sodomy in the First Degree, Attempted Sodomy in the First Degree and one count of Sexual Abuse in the First Degree with respect to victims "B.M." and "G.G." were established by the People at trial to have taken place in late 1998 into early 1999. "G.G." is the defendant's granddaughter who befriended "B.M." around that time. The remaining criminal acts for which defendant stands convicted were committed against "B.M." and "K.P." in the summer of 2003.

Following the verdict the defendant was remanded to the custody of the Suffolk County Sheriff as is required by statute (*see* Criminal Procedure Law §530.45). Sentencing was scheduled for October 2, 2008 and adjourned at trial counsel's request to November 10, 2008.

On October 24, 2008 this Court received a Notice of Appearance from present counsel together with a Consent To Change Attorney and a request for an adjournment of sentencing. That application was granted and sentencing was again adjourned to February 18, 2009. On February 13, 2009 the People requested a further adjournment of sentencing having been served with the defendant's instant application approximately ten days earlier. That request was granted and the matter was again adjourned to April 29, 2009. On that day the defendant's motion was marked for final submission.

With respect to the merits of defendant's application, he cites three primary legal issues for consideration. First, defendant maintains that his trial counsel failed to fully investigate the authenticity of evidence offered against him at trial and therefore deprived him of the effective assistance of counsel. Next, defendant contends that trial counsel failed to make proper objections to inadmissible hearsay testimony during the trial further depriving him of the effective assistance of counsel. Finally, defendant argues that the Court committed reversible error when it denied the defendant's pre-trial motion to dismiss the indictment based on the assertion that the indictment failed to allege a specific time period during which the alleged crimes occurred thereby depriving him of his ability and due process right to mount a proper defense.

As to the first prong of the application, the defendant maintains that his investigation into the authenticity of several items admitted into evidence reveals that each of the items were improperly, or fraudulently, dated. Specifically, defendant contends that two photographs of two of the victims, "B.M." and "G.G.", which the prosecutor argued at trial were taken at a time which would corroborate the testimony of "B.M." were actually taken several years later. This argument is supported by the defendant's post-trial investigation which revealed that the film used to develop the first photograph was not even manufactured until several years after the date the People maintained the photograph was taken. With respect to the other photograph, the defendant's investigation shows that a sweatshirt worn by "B.M." displayed a logo of a company that did not enter commerce until three years after the date testified to at trial.

Additionally, the defendant maintains that a "Turbo-Twist" toy spelling machine given to "B.M." by the defendant did not enter commerce until August, 2000, not 1998 to 1999 as the testimony at trial provided. Finally, on both direct and cross-examination, "B.M." referred to an episode of "Law & Order: Special Victim's Unit" as one of the reasons for her delayed disclosure

That television series, the defendant's subsequent investigation revealed, did not air until several months after the time which "B.M." stated she saw a specific episode.

Each of these irregularities, defendant maintains, were susceptible to discovery with even a rudimentary investigation prior to, or even during, the trial. Considered cumulatively, the defendant argues, the failure of defense counsel to, at the very least, use the investigator previously retained by the defendant to gather this information to impugn the credibility of the victims amounted to the ineffective assistance of counsel.

While the defendant's post-trial investigation has uncovered what some may consider evidence supporting his defense, it nevertheless represents matters that are *dehors* the record and are therefore not subject to review by way of a Criminal Procedure Law §330.30 motion. The cases relied upon by the defendant, *People v. Bussey* (6 AD3d 621 [2005]), *People v. Maldonado* (278 AD2d 513 [2000]) and *People v. Benjamin* (151 AD2d 685 [1989]), for the contrary conclusion are clearly distinguishable from the present case. First, each of those Criminal Procedure Law §330.30 motions were decided after the court conducted an evidentiary hearing on the merits of the application. Second, each of those cases involved claims of ineffective assistance of counsel based primarily on counsel's failure to properly investigate alibi claims or call witnesses to provide testimony supporting that alleged alibi. In other words, hearings were held to determine if there was any sound reason for counsel's failure to investigate or call witnesses to verify an alibi claim. Such is not the nature of the claim in the instant application.

Rather, the gravamen of defendant's instant motion centers on trial counsel's failure to investigate the authenticity of certain items of evidence introduced at trial. A determination with respect to counsel's effectiveness based on that alleged omission does not require an evidentiary hearing. The omission and its legal effects are simply not subject to resolution by taking testimony at such a hearing. In other words, testimony will not reveal trial counsel's strategy or tactics, the investigations were simply not done. Consequently, inasmuch as that information collected by the defendant post-trial is clearly outside the trial record, that branch of defendant's motion must be denied as procedurally defective (*see People v. Williams*, 34 AD3d 856 [2006]; *People v. Wells*, 265 AD2d 588 [1999]; *People v. Armstrong*, 237 AD2d 452 [1997]; *see also People v. Griffin*, 48 AD3d 1233 [2008]). Additionally, this Court cannot conclude, for that matter, that trial counsel's failure to obtain this new information prior to trial "would require a reversal or modification of the judgment as a matter of law by an appellate court" (*see* Criminal Procedure Law §330.30[1]).

As to the second prong of the application, defendant claims that trial counsel failed to raise timely objections to inadmissible hearsay in the form of "outcry witness" testimony which improperly bolstered the testimony of the victims, thus depriving him of the ineffective assistance of counsel. For the reasons that follow this branch of the defendant's application must also be denied.

To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that he was deprived of a fair trial by less than meaningful representation; a simple disagreement

with strategies, tactics or the scope of possible cross-examination, weighed long after the trial, does not suffice. Defense counsel must commit egregious and prejudicial error (*see People v. Quinones*, 265 AD2d 634 [1998]). A claim of ineffective assistance of counsel will not lie where the purported failures of counsel are the result of a calculated trial strategy which, in the final analysis does not work (*see People v. Miller*, 291 AD2d 929 [2002]; *People v. Washington*, 184 AD2d 451 [1992]).

Initially, the Court notes that it is of the belief that part of the defense to this matter was the contention that the victims in this matter concocted these stories of sexual abuse as revenge against "G.G." and other members of the defendant's family after the relationship between "B.M." and "G.G." ended unpleasantly and to garner the love and attention of their own families. It is also of note that the so-called "outcry" of these victims occurred three to seven years after the crimes were committed.

Without determining the legal merits of the defendant's argument that the testimony complained of constituted inadmissible hearsay, it would appear in any event, that defense counsel's failure to object to some, not all, of the testimony was a specific trial strategy, his affirmation to the contrary notwithstanding (*see Defendant's Exhibit "J"*). That strategy was obviously to highlight the fact that these young girls waited as much as seven years to complain of the sexual abuse committed by defendant. The failure to supply an immediate "outcry," which was raised by trial counsel in his opening statement and elicited through these other witnesses, lends to the proposition and conclusion that the girls "banded-together" to create these stories as some sort of revenge against "G.G." after her relationship with "B.M." ended.

Because counsel's failure to object could be viewed as a specific trial strategy, this second prong of the defendant's motion must be denied. Such a conclusion is bolstered by this Court's opinion that, even if the Court were to credit the defendant's argument, reversal or modification by an appellate court would not be required as a matter of law (*see Criminal Procedure Law §330.30[1]*).

Finally, with respect to defendant's contention that this Court committed reversible error in not dismissing the indictment pre-trial, that branch of the application must also be denied. As part of trial counsel's pre-trial motion practice he submitted an omnibus motion seeking, among other things, dismissal of the indictment. Specifically, trial counsel contended in that motion that the indictment was defective in that it did not contain a sufficient statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated time period (*see Criminal Procedure Law §200.50[6]*).

This Court, applying the factors set forth in the New York State Court of Appeals case of *People v. Morris* (61 NY2d 290 [1984]), made specific determinations with respect to each of the listed factors and ultimately determined that the indictment set forth sufficient intervals of time to protect the defendant's constitutional rights (*see People v. Green*, Omnibus Motion Decision, January 8, 2008, County Court, Suffolk County, Kahn, J.). Therefore, this prong of the defendant's motion sounds in the nature of a motion to reargue.

A motion for reargument is designed to afford a party the opportunity to establish that the Court overlooked or misapprehended relevant facts or misapplied any controlling principles of law (*see Foley v. Roche*, 86 AD2d 887 [1982]; Civil Practice Law and Rules §2221). It is not designed to afford the losing party an opportunity to argue again the same issues that were previously determined.

This Court has reviewed it's pre-trial omnibus motion decision in light of the recent Appellate Division, Second Department case of *People v. Bennett* (57 AD3d 688 [2008]), upon which the defendant heavily relies. After that examination this Court concludes that the defendant has failed to make the requisite showing that the Court overlooked or misapplied any controlling principles of law. Consequently, this Court adheres to its original determination and the motion to dismiss the indictment as defective is, once again, denied.

Accordingly, the defendant's motion is denied in all respects. All parties are directed to appear before this Court at 9:30 a.m. on July 16, 2009 for sentencing in this matter.

The foregoing shall constitute the decision and order of the Court.

Dated: June 29, 2009



BARBARA KAHN, J.C.C.

Exhibit C

COUNTY COURT, SUFFOLK COUNTY
STATE OF NEW YORK

Present: HON. BARBARA KAHN, J.C.C.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 01169/2007

v.

Date of Motion: August 28, 2009

THOMAS GREEN

Defendant.

-----X

HONORABLE THOMAS J. SPOTA
District Attorney of Suffolk County
Marion M. Tang, Esq., *of counsel*
Criminal Courts Building
Riverhead, New York 11901

RONALD L. KUBY, ESQ.
Attorney for Defendant
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, New York 10011

Defendant stands convicted of two counts of Sodomy in the First Degree in violation of Penal Law §130.50, Attempted Sodomy in the First Degree in violation of Penal Law §110-130.50, two counts of Sexual Abuse in the First Degree in violation of Penal Law §130.65 and two counts of Sexual Abuse in the Second Degree in violation of Penal Law §130.60, after a jury verdict rendered on August 21, 2008. He now moves, pursuant to Criminal Procedure Law §440.10[1](b), (c) and (h), for an order vacating that judgment of conviction. In deciding the motion the Court has considered the defendant's notice of motion, affirmation in support and memorandum of law, the People's affidavit in opposition and memorandum of law and the defendant's reply memorandum of law. The motion is determined as follows.

Initially, Criminal Procedure Law §440.10[1] allows a court, at any time after the entry of a judgment and upon motion by the defendant, to vacate that judgment of conviction. Pertinent to the instant application, that statute specifically allows the court to grant such a motion where: (1) the judgement was procured by duress, misrepresentation or fraud on the part of the court or the prosecutor or a person acting for or in behalf of a court or a prosecutor; (2) material evidence adduced by the People at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or (3) the judgement was obtained in violation of a right of the defendant under the constitution of this state or of the United States (Criminal Procedure Law §440.10).

With respect to defendant's application, he cites two issues for consideration. First, defendant maintains that his trial counsel failed to fully investigate the authenticity of certain

items of evidence offered against him at trial and therefore deprived him of the effective assistance of counsel. Next, defendant contends that the People knew or should have known of the false nature of the evidence offered against defendant which corroborated the testimony of the victims in this case, thereby depriving him of the constitutionally mandated due process of law.

As to the first prong of the application, the defendant's present counsel maintains that his investigation into the authenticity of several items admitted into evidence has revealed that each of the items indicated were improperly, or fraudulently, dated. Specifically, defendant contends that two photographs of two of the victims, "B.M." and "G.G.," which the prosecutor argued at trial were taken at a time which would corroborate the testimony of "B.M.," were actually taken several years later. This argument is supported by the defendant's post-trial investigation which has uncovered that the film used to develop the first photograph was not even manufactured until several years after the date the People maintained the photograph was taken. With respect to the other photograph, the defendant's investigation shows that a sweatshirt worn by "B.M." in the photograph displayed a logo, "Princess University," that did not enter commerce until three years after the date testified to at trial.

Additionally, the defendant maintains that a "Turbo-Twist" toy spelling machine given to "B.M." by the defendant did not enter commerce until August, 2000, not between 1998 and 1999 as the testimony at trial provided. Finally, "B.M." referred to an episode of "Law & Order: Special Victim's Unit" as one of the reasons for her delayed disclosure. That television series, the defendant's subsequent investigation revealed, did not air until several months after the time which "B.M." stated she saw a specific episode.

Each of these irregularities, defendant maintains, were susceptible to discovery with even a rudimentary investigation prior to, or even during, the trial. Considered cumulatively, the defendant argues, the failure of defense counsel to, at the very least, use the investigator previously retained by the defendant to gather this information to impugn the credibility of the victims amounted to the ineffective assistance of counsel.

With respect to that issue, the constitutional requirement of effective assistance of counsel is satisfied when "the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation (*see People v. Baldi*, 54 NY2d 137 [1981]). In order to prevail on a claim of ineffective assistance of counsel, the defendant must overcome a strong presumption that defense counsel rendered effective assistance; a simple disagreement with strategies, tactics, or the scope of possible cross-examination, weighed long after the conclusion of the case, will not suffice (*People v. Benn*, 68 NY2d 941 [1986]). Indeed, "a reviewing court must avoid confusing true ineffectiveness with mere losing tactics and according undue significance to retrospective analysis" (*People v. Baldi, supra*). Instead, it is incumbent on defendant to demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings (*People v. Benevento*, 91 NY2d 708 [1998]).

Here, while defense counsel's post-trial investigation has revealed that certain items of evidence originated from a time other than that represented at trial, the Court cannot say that defendant received the ineffective assistance of trial counsel. Having presided over this rather lengthy trial, this Court observed first hand trial counsel's skilled cross-examination of each the victims and several other People's witnesses. The issue of the credibility of the victims, present throughout the trial, was highlighted by trial counsel and specifically attacked on both cross-examination and through the testimony of defense witnesses. That attack was met, to some degree, with obvious success inasmuch as the defendant was acquitted of charges relating to two alleged victims.

As to those specific items of evidence now at issue, this Court cannot say that counsel's failure to investigate the dating of the photographs, the date of manufacture of the "Turbo-Twist" or the airing date of a certain episode of "Law and Order: Special Victim's Unit," deprived defendant of the ineffective assistance of counsel. While the Court may agree that the proper dating of the photographs and other material would have been beneficial to defendant, it cannot be said that the absence of this properly authenticated evidence would have resulted in defendant's complete acquittal. There was sufficient evidence adduced at trial, separate and apart from the evidence at issue, to support the People's case and defendant's convictions.

Where, as here, the evidence and the circumstances of a particular case reveal that meaningful representation was provided, a defendant's constitutional right to the effective assistance of counsel has been satisfied (*see People v. Brown*, 300 AD2d 314 [2002]; *citing People v. Satterfield*, 66 NY2d 796 [1985]). Accordingly, that branch of the defendant's motion to vacate his convictions based on the alleged ineffectiveness of trial counsel is denied.

That branch of defendant's motion for an order vacating his convictions based on duress, fraud or misrepresentation on the part of the prosecution, or alternatively, that the prosecution knowingly adduced false evidence at trial, must also be denied. There is no evidence in the record before the Court that would tend to show that the prosecutor knew or should have known that the photographs, "Turbo-Twist" and "Law and Order" episode were from a time other than that represented at trial (*People v. Stern*, 226 AD2d 238 [1996]). Indeed, with respect to the first photograph, the People relied on the testimony of the defendant's own daughter who provided a time frame for that photograph.

Based on the sum of the foregoing the defendant's motion is denied in all respects.

This shall constitute the decision and order of the Court.

Dated: December 14, 2009


BARBARA KAHN, J.C.C.

COUNTY COURT : SUFFOLK COUNTY
STATE OF NEW YORK

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

- against -

THOMAS GREEN,

NOTICE OF ENTRY
Case No. 1169-2007

Defendant.

-----x

SIR :

PLEASE TAKE NOTICE that the within is a true copy of an Order that was duly entered
in the Office of the Clerk of the within named Court on December 14, 2009.

DATED: Riverhead, New York
December 17, 2009

THOMAS J. SPOTA
District Attorney of
Suffolk County
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

TO: RONALD L. KUBY, ESQ.
Attorney for Defendant
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, NY 10011

Exhibit D

Supreme Court of the State of New York
Appellate Division : Second Judicial Department

M100979
L/

REINALDO E. RIVERA, J.

2010-00561

DECISION & ORDER ON APPLICATION

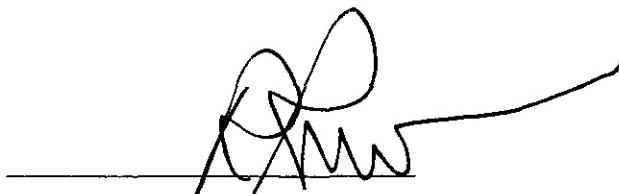
The People, etc., plaintiff,
v Thomas Green, defendant.

(Ind. No. 1169-07)

Application by the defendant, pursuant to CPL 450.15 and 460.15 for a certificate granting leave to appeal to this court from an order of the County Court, Suffolk County, dated December 14, 2009, which has been referred to me for determination.

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is

ORDERED that the application is denied.



REINALDO E. RIVERA
Associate Justice

April 7 , 2010

PEOPLE v GREEN, THOMAS

Exhibit E

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D34017
N/kmb

AD3d

Argued - January 10, 2012

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2009-09411

DECISION & ORDER

The People, etc., respondent,
v Thomas F. Green, appellant.

(Ind. No. 1169/07)

✓ Ronald L. Kuby, New York, N.Y., and Sokolski & Zekaria, P.C., New York, N.Y.
(Robert E. Sokolski and Daphna Zekaria of counsel), for appellant (one brief filed).

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Karla Lato of counsel), for
respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Kahn, J.), rendered July 16, 2009, convicting him of sodomy in the first degree (two counts), attempted sodomy in the first degree, sexual abuse in the first degree (two counts), and sexual abuse in the second degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial of that branch of the defendant's omnibus motion which was to dismiss the indictment.

ORDERED that the judgment is affirmed.

The defendant was accused of having committed numerous crimes of a sexual nature against five young girls: his granddaughter and four of her friends. Most of the crimes were alleged to have been committed in the defendant's home when other adults were not present, but some were alleged to have been committed in public places. The indictment, as supplemented by the bill of particulars, alleged that the crimes were committed during particular seasons in 1998-1999, 2001, and 2003. After a lengthy trial, the defendant was convicted of counts relating to three of the five complainants.

Before sentencing, the defendant filed a motion to set aside the verdict (*see CPL 330.30[1]*) on the ground, among others, that he had been deprived of his right to effective assistance of counsel. In that motion, the defendant cited alleged deficiencies in trial counsel's performance that appeared on the face of the record as well as deficiencies that did not appear on the record. The County Court denied the motion, finding, in part, that it could not adjudicate, in the context of a CPL 330.30 motion, claims of ineffective assistance of counsel resting on matters not appearing on the record. The defendant was sentenced to lengthy prison terms. In 2009, he filed a motion pursuant to CPL 440.10 to vacate his judgment of conviction in which he claimed that he had been deprived of his right to effective assistance of counsel. The County Court denied that motion, and the defendant's application for leave to appeal was denied by a Justice of this Court. On this direct appeal from the judgment of conviction, the defendant raises numerous claims. None requires reversal, and we affirm the judgment of conviction.

The defendant contends that the County Court erred by denying that branch of his omnibus motion which was to dismiss the indictment on the ground that, even as amplified by the bill of particulars, it did not provide sufficient notice as to when the crimes were allegedly committed (*see CPL 200.50[6]*). Taking into consideration all relevant circumstances, including, among others, the age of the victims at the times of the commission of the crimes, the nature of the crimes, and the People's efforts to narrow the time frames (*see People v Watt*, 81 NY2d 772, 774-775), the time periods alleged were not so lengthy as to require dismissal (*see People v Case*, 29 AD3d 706, 706-707; *People v Williams*, 280 AD2d 563, 564; *People v O'Keefe*, 276 AD2d 647; *cf. People v Sedlock*, 8 NY3d 535, 539-540; *People v Weekes*, 71 AD3d 1065; *People v Bennett*, 57 AD3d 688, 689; *People v Goulbourne*, 199 AD2d 533).

In addition, the defendant contends that certain testimony relating to the reporting of the crimes and the course of the police investigation constituted improper bolstering. The defendant, however, failed to preserve this contention for appellate review (*see CPL 470.05[2]*; *People v Bevans*, 84 AD3d 827; *People v Rich*, 78 AD3d 1200, 1202; *People v Santiago*, 16 AD3d 600). In any event, the testimony did not, to the extent it may have gone beyond the scope of what was proper (*cf. People v Bernardez*, 85 AD3d 936, 938), deprive the defendant of a fair trial. The defendant's contention that his trial counsel was ineffective for failing to object to the admission of the aforementioned testimony is without merit (*see People v Cass*, ____NY3d____, 2012 NY Slip Op 01144, *9 [2012]).

Moreover, the County Court did not err in permitting expert testimony about child sexual abuse accommodation syndrome. That testimony was properly offered for the purpose of providing an explanation for the post-crime behavior of the complainants that might have appeared to be unusual or which the jurors may not have otherwise understood (*see People v Spicola*, 16 NY3d 441, 465, *cert denied* ____US____, 132 S Ct 400; *People v Carroll*, 95 NY2d 375, 387). Further, the defendant has failed to support his claim that child sexual abuse accommodation syndrome has been discredited within the scientific community (*see People v Spicola*, 16 NY3d at 465; *cf. Gersten v Senkowski*, 426 F3d 588, 611, *cert denied sub nom. Artus v Gersten*, 547 US 1191).

Finally, the County Court correctly held that it lacked the authority to consider facts not appearing on the record in determining the defendant's motion pursuant to CPL 330.30(1) to set

February 21, 2012

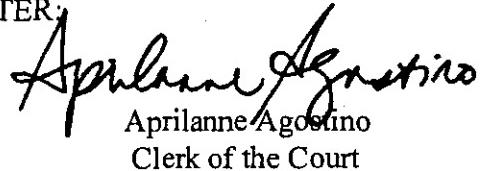
Page 2.

PEOPLE v GREEN, THOMAS F.

aside the verdict on the ground, inter alia, of ineffective assistance of counsel (*see People v Rohlehr*, 87 AD3d 603, 604; *People v Miller*, 68 AD3d 1135). Accordingly, the County Court properly denied that motion.

BALKIN, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,
- against -

THOMAS F. GREEN,

Appellant.

NOTICE OF ENTRY
Ind. No. 1169-07
App. Div. No.
2009-09411

SIR :

PLEASE TAKE NOTICE that the enclosed Order was duly entered in the Office of the Clerk of the Appellate Division, Second Department on February 21, 2012.

DATED: Riverhead, New York
February 28, 2012

THOMAS J. SPOTA
District Attorney of
Suffolk County
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

TO: RONALD KUBY, ESQ.
Attorney for THOMAS F. GREEN
Law Office of Ronald Kuby
119 West 23rd Street, Suite 900
New York, NY 10011

Exhibit F

State of New York
Court of Appeals

BEFORE: HONORABLE SUSAN PHILLIPS READ,
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

THOMAS F. GREEN,

Appellant.

**ORDER
DENYING
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: June 29, 2012



Associate Judge

*Description of Order: Decision and Order of the Appellate Division, Second Department, dated February 21, 2012, affirming a judgment of the County Court, Suffolk County, dated July 16, 2009.

Exhibit G



PEOPLE'S
EXHIBIT

X 18 7/30/02

Exhibit H

PEOPLES
EXHIBIT

EV32 515/08
TA



06017221343-02 1512 0210

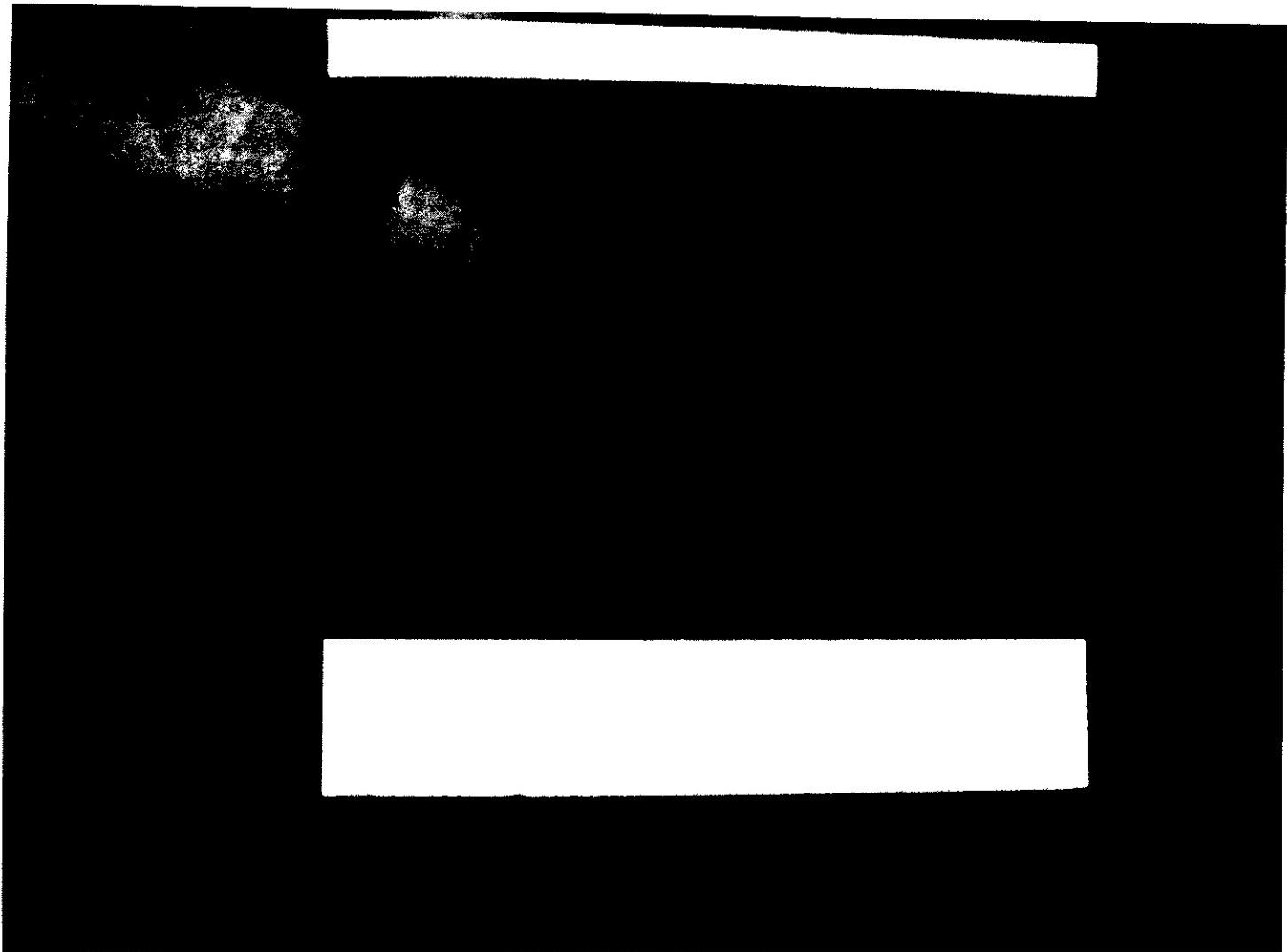


Exhibit I



Polaroid Corporation
300 Baker Road, Ste. 330
Concord, MA 01740

Memorandum

TO: Laurie Mizrahi
FROM: Marianne Dilman
DATE: November 04, 2008
RE: Frame code Inquiry

This memo is in response to your request for information relating to the following frame codes:

06017221343-02 1512 0210

In 2002, our frame codes were changed to 9 digits along with a one or two-digit prototype identifier that directly relates to when and where a specific film lot was manufactured. Using the above mentioned frame codes as an example, we would decipher the frame code in the following way:

Example:

06 0 17 2 21 343 - 02 1512 0210
(1) (2) (3) (4) (5) (6) (7)

- (1) 06 - month of manufacture
- (2) 0 - year of manufacture (2000)
- (3) 17 - assembly machine number
- (4) 2 21 - shift/day production
- (5) 343 - film lot identification number
- (6) 02 - prototype identifier
- (7) 1512 0210 - time sequence (military time) / sequence number in frames.

Our manufacturing records indicate film lot #343 was manufactured on June 21, 2000 on assembly machine #17 at our Waltham Massachusetts facility and is one of Spectra Format film. For *optimum film quality* this film lot should have been used by September 2001.

This film pack could not have been manufactured prior to 1997 – since that is when we converted to 2 digit prototype identifier.

About Spectra Film.

The film pack contains 10 pictures (exposures). Within the film pack, the sequence number will count up. The lowest number will be the first frame. The highest number the last (#10) frame. There is no way to determine the frame position from the sequence number.

I do hope that this information will assist you in your case.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianne Dilman".

Marianne Dilman

Exhibit J

AFFIDAVIT OF CINDY GREEN
DATED JANUARY 17, 2009

STATE OF NEW YORK: ss

COUNTY OF SUFFOLK:

CINDY GREEN, being duly sworn, deposes and says:

1. I am the mother of Gina Green and give this statement freely and voluntarily.

2. I reside at 188 Overlook Drive, Farmingville, NY 11738.

3. I testified at the trial of Thomas Green as a result of being subpoenaed by the prosecution.

4 I testified as to a ~~photograph~~ "photograph off my daughter Gina Green and Barbara Monaco that was introduced into evidence as People's Exhibit 32.

5. I have looked at People's 32 and recall testifying that it was taken in 1998. The reason for this testimony was that the jacket the photo was held in states that it was "printed in 6/98."

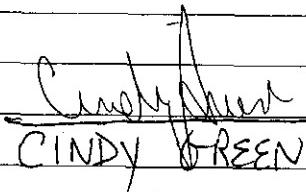
6. I recall being called into the courtroom and asked to identify who was in the photo, which I did. I replied that it was my daughter Gina and her friend Barbara. I was asked

Cindy Green Affidavit - Page Two

how old she was in the picture. I recall not being sure of my daughter's exact age in the photo and took a guess as to her age. The prosecutor then handed me the photo which was in the jacket and asked me to read the wording on the lower left corner. I did and a result, my trial testimony reflects that the date on the back of the sleeve states that it was printed in June, 1998.

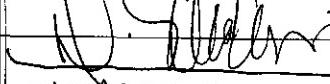
7. I have been shown a confirming letter from the Polaroid Corporation. This letter confirms that the photograph contained within the jacket could not have been taken in June, 1998 and instead the first possible date that this photo could have been taken is June 21, 2000, which is the date the film ~~was~~ used for this particular photo was manufactured.

8. As a result, it is clear to me that People's Exhibit 32 was taken after June 21, 2000.


CINDY GREEN

Sworn to before me

this 17th day of January, 2009



NOTARY PUBLIC

DARINA SPICOLSKI
Notary Public, State of New York
No. 12809813343
Suffolk County
Commissioned 01/12/2009
Expires 01/12/2012



Polaroid Corporation
300 Baker Road, Ste. 330
Concord, MA 01740

Memorandum

TO: Laurie Mizrahi
FROM: Marianne Dilman
DATE: November 04,2008
RE: Frame code Inquiry

This memo is in response to your request for information relating to the following frame codes:

06017221343-02 1512 0210

In 2002, our frame codes were changed to 9 digits along with a one or two-digit prototype identifier that directly relates to when and where a specific film lot was manufactured.

Using the above mentioned frame codes as an example, we would decipher the frame code in the following way:

Example:

06 0 17 2 21 343 - 02 1512 0210
(1) (2) (3) (4) (5) (6) (7)

- (1) 06 - month of manufacture
- (2) 0 - year of manufacture (2000)
- (3) 17 - assembly machine number
- (4) 2 21 - shift/day production
- (5) 343 - film lot identification number
- (6) 02 - prototype identifier
- (7) 1512 0210 - time sequence (military time) / sequence number in frames.

Our manufacturing records indicate film lot #343 was manufactured on June 21, 2000 on assembly machine #17 at our Waltham Massachusetts facility and is one of Spectra Format film. For *optimum film quality* this film lot should have been used by September 2001.

This film pack could not have been manufactured prior to 1997 – since that is when we converted to 2 digit prototype identifier.

About Spectra Film.

The film pack contains 10 pictures (exposures). Within the film pack, the sequence number will count up. The lowest number will be the first frame. The highest number the last (#10) frame. There is no way to determine the frame position from the sequence number.

I do hope that this information will assist you in your case.

Sincerely,

Marianne Dilman

Exhibit K



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Thu Oct 30 04:10:33 EDT 2008

[TESS Home](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browse Dict](#) [SEARCH OG](#) [TOP](#) [BOTTOM](#) [HELP](#)

[Logout](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

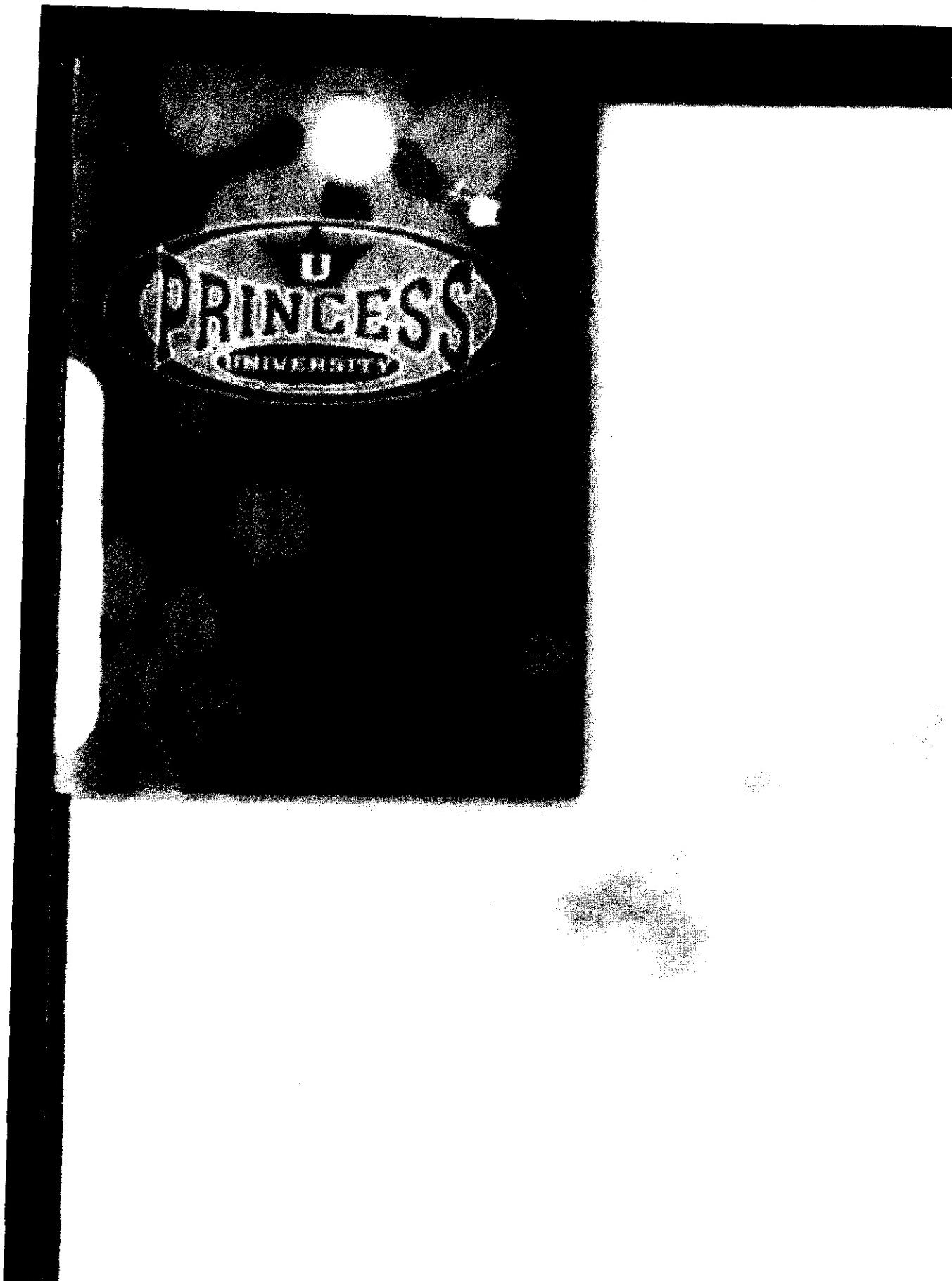
[TARR Status](#) [ASSIGN Status](#) [TOP](#) [TTAB Status](#) (*Use the "Back" button of the Internet Browser to return to TESS*)

Typed Drawing

Word Mark	PRINCESS UNIVERSITY
Goods and Services	IC 016. US 002 005 022 023 029 037 038 050. G & S: Stationery, notepads, and allied paper products, namely, notebooks and envelopes. FIRST USE: 20010705. FIRST USE IN COMMERCE: 20010705
	IC 025. US 022 039. G & S: Women's clothing, namely, blouses, sweaters, skirts, slacks and footwear. FIRST USE: 20010705. FIRST USE IN COMMERCE: 20010705
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76298498
Filing Date	August 13, 2001
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	December 10, 2002
Registration Number	2692342
Registration Date	March 4, 2003
Owner	(REGISTRANT) EFX Marketing LLC CORPORATION NEW YORK 925 Avenue T Brooklyn NEW YORK 11223
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browse Dict](#) [SEARCH OG](#) [TOP](#) [BOTTOM](#) [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



Int. Cls.: 16 and 25

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 39 and 50

United States Patent and Trademark Office

Reg. No. 2,692,342
Registered Mar. 4, 2003

TRADEMARK
PRINCIPAL REGISTER

PRINCESS UNIVERSITY

EFX MARKETING LLC (NEW YORK CORPORATION)
925 AVENUE T
BROOKLYN, NY 11223

FOR: STATIONERY, NOTEPADS, AND ALLIED PAPER PRODUCTS, NAMELY, NOTEBOOKS AND ENVELOPES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 7-5-2001; IN COMMERCE 7-5-2001.

FOR: WOMEN'S CLOTHING, NAMELY, BLOUSES, SWEATERS, SKIRTS, SLACKS AND FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-5-2001; IN COMMERCE 7-5-2001.

SER. NO. 76-298,498, FILED 8-13-2001.

MARTHA FROMM, EXAMINING ATTORNEY

Int. Cls.: 16 and 25

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 39 and 50

United States Patent and Trademark Office

Reg. No. 2,692,342
Registered Mar. 4, 2003

TRADEMARK
PRINCIPAL REGISTER

PRINCESS UNIVERSITY

EFX MARKETING LLC (NEW YORK CORPORATION)
925 AVENUE T
BROOKLYN, NY 11223

FOR: STATIONERY, NOTEPADS, AND ALLIED PAPER PRODUCTS, NAMELY, NOTEBOOKS AND ENVELOPES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 7-5-2001; IN COMMERCE 7-5-2001.

FOR: WOMEN'S CLOTHING, NAMELY, BLOUSES, SWEATERS, SKIRTS, SLACKS AND FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-5-2001; IN COMMERCE 7-5-2001.

SER. NO. 76-298,498, FILED 8-13-2001.

MARTHA FROMM, EXAMINING ATTORNEY

MAY-31-02 FRI 02:05 PM

P.01



U. S. PATENT AND TRADEMARK OFFICE

Trade mark Electronic Search System (TESS)

TESS was last updated on Thu May 30 04:10:45 EDT 2002

[PTO Home](#) [TRADEMARK](#) [TESS Home](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browser View](#) [Logout](#) [TOP](#) [HELP](#)

 1007 JES -4 A 11:23
 U.S. PATENT
 AND TRADEMARK
 OFFICE

 TRADE
 MARK
 FOR
 TRADE
 MARKS

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

Check Status: (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of your Internet Browser to return to TESS)

Typed Drawing

Word Mark	PRINCESS UNIVERSITY
Goods and Services	CABANDONED; IC 016, US 002 005 022 023 029 037 038 050, G & S: Stationery, notepads, and allied paper stock, namely, notebooks and envelopes
Mark Drawing Code	CABANDONED; IC 025, US 022 039, G & S: Women's clothing, namely, blouses, sweaters, skirts, slacks and vests
Serial Number	67298498
Filing Date	August 13, 2001
Owner	APPLICANT FFX Marketing LLC CORPORATION NEW YORK 925 Avenue T Brooklyn NEW YORK 11223
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	April 22, 2002

[PTO Home](#) [TRADEMARK](#) [TESS Home](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Browser View](#) [TOP](#) [HELP](#)

Please place these papers with the previous
 faxed set on these "abandoned" applications

08-13-2001

U.S. Patent & TMO&TM Mail Rpt Dt #28

Applicant: EFX Marketing LLC
Address: 925 Avenue T
Address: Brooklyn NY 11223
First Date: July 5, 2001
In Commerce: July 5, 2001
Goods/Services: IC 03 cosmetics, namely, lipsticks, nail polish
IC 14 costume jewelry, watches
IC 16 stationery, notepads, and allied paper products
IC 18 leather goods, namely purses, back-packs
IC 25 Women's clothing, namely, blouses, sweaters,
skirts, slacks and footwear
IC 28 toys
IC 38 communications, namely, entertainment, via the
global computer network

PRINCESS UNIVERSITY



76298498

08-13-2001

U.S. Patent & TMOfc/TM Mail Rpt Dt #29

Applicant: EFX Marketing LLC
Address: 925 Avenue T
Address: Brooklyn NY 11223
First Date: July 5, 2001
In Commerce: July 5, 2001
Goods/Services: IC 03 cosmetics, namely, lipsticks, nail polish
IC 14 costume jewelry, watches
IC 16 stationery, notepads, and allied paper products
IC 18 leather goods, namely purses, back-packs
IC 25 Women's clothing, namely, blouses, sweaters,
skirts, slacks and footwear
IC 28 toys
IC 38 communications, namely, entertainment, via the
global computer network

PRINCESS UNIVERSITY



76298498



08-13-2001

U.S. Patent & TMOfc/TM Mail Rpt Dt #28



76298498

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-10-30 16:56:26 ET

Serial Number: 76298498 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2692342

Mark (words only): PRINCESS UNIVERSITY

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-03-04

Filing Date: 2001-08-13

Transformed into a National Application: No

Registration Date: 2003-03-04

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-05-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. EFX Marketing LLC

Address:

EFX Marketing LLC
925 Avenue T
Brooklyn, NY 11223
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 016

Class Status: Active

Stationery, notepads, and allied paper products, namely, notebooks and envelopes

Basis: 1(a)

First Use Date: 2001-07-05

First Use in Commerce Date: 2001-07-05

International Class: 025

Class Status: Active

Women's clothing, namely, blouses, sweaters, skirts, slacks and footwear

Basis: 1(a)

First Use Date: 2001-07-05

First Use in Commerce Date: 2001-07-05

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-05-08 - Case File In TICRS

2003-03-04 - Registered - Principal Register

2002-12-10 - Published for opposition

2002-11-20 - Notice of publication

2002-09-18 - Approved for Pub - Principal Register (Initial exam)

2002-05-31 - Communication received from applicant

2002-09-04 - Reinstated

2002-05-28 - Abandonment - Failure To Respond Or Late Response

2002-04-22 - Communication received from applicant

2001-10-19 - Non-final action mailed

2001-09-24 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

EFX MARKETING LLC
925 AVENUE T
BROOKLYN NY 11223-3333



08-13-2001

U.S. Patent & TMOfc/TM Mail Rpt Dt #26

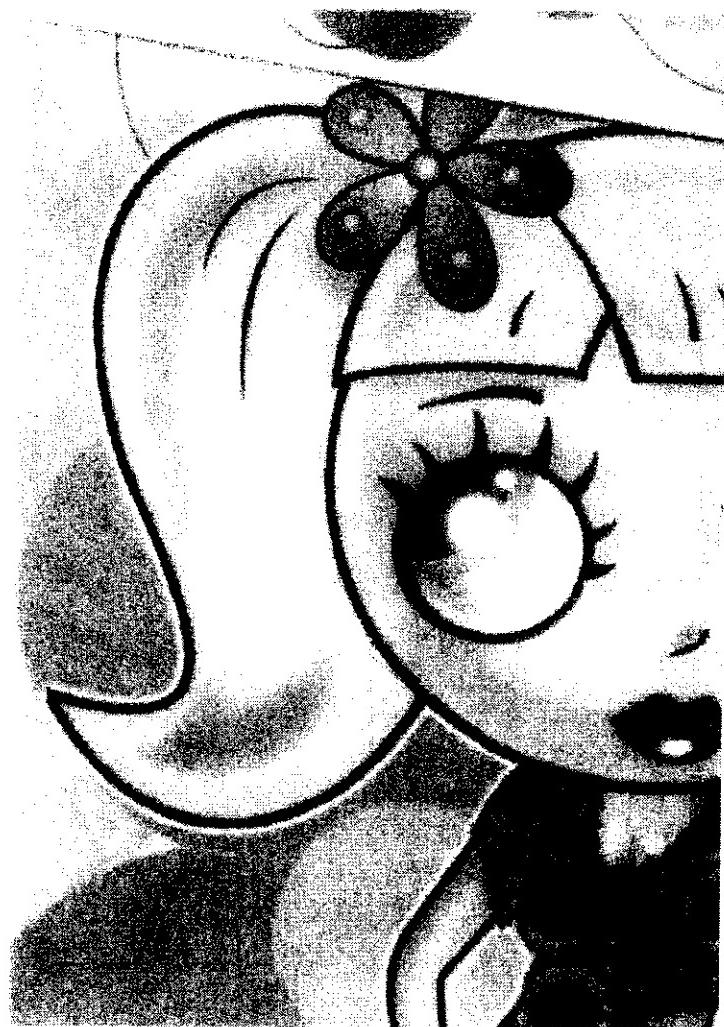


Exhibit L

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----x
PEOPLE OF THE STATE OF NEW YORK,

-against-

Ind. No. 05850-2007

THOMAS F. GREEN,

**AFFIRMATION OF
DAVID PRESSMAN**

Defendant.

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID PRESSMAN, an attorney duly admitted to practice in the Courts of this State,
under penalties of perjury, affirms and says:

1. I am an attorney in New York County, formerly engaged as part of the defense team in the above-captioned case, and I respectfully submit this Affirmation in support of the admissibility of the documents annexed to this Affirmation as Exhibit A.
2. On October 30, 2008 and November 4, 2008, I visited the website of the United States Patent and Trademark Office, *available at,* www.uspto.gov. On both occasions, I followed a link to the United States Patent and Trademark Office's "Trademark Electronic Search System" or "TESS" database.
3. The United States Patent and Trademark Office describes the TESS database as "intended for use by the general public" and "contain[ing] more than 4 million pending, registered and dead federal trademarks." See <http://tess2.uspto.gov/bin/gate.exe?f=tess&state=um4c2c.1.1>.

4. Utilizing the TESS database, I conducted a series of searches for trademark and patent documents (stored in electronic form on the database) that were related to the "Princess University" and "Turbo Twist" marks.
5. Upon identifying the relevant marks in TESS, TESS allows users to link to the United States Patent and Trademark Office's "Trademarks Document Retrieval" or "TDR Portlet" database to retrieve electronic facsimiles of the original documents filed with respect to any particular trademark. See, e.g.,
<http://tmportal.uspto.gov/external/portal/tow?SRCH=Y&isSubmitted=true&details=&SELECT=US+Serial+No&TEXT=76298498>.
6. With respect to both the "Princess University" and "Turbo Twists" marks, I accessed the TDR Portlet and printed copies of relevant documents reflecting when those marks were registered with the United States Patent and Trademark Office as having first entered commerce.
7. The printed copies of those documents, annexed hereto, were not modified or altered in any way. They are presented to this Court in the very same form in which they were obtained from the United States Patent and Trademark Office's website and database.

8. As of executing this Affirmation, the original records remain accessible via the TESS database and TDR Portlet on the United States Patent and Trademark Office's website.

Dated: New York, New York
December 21, 2008



DAVID PRESSMAN, ESQ

Exhibit M

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

1169-2007

THOMAS GREEN,

Defendant.

-----X

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

THOMAS GREEN, JR., being duly sworn, hereby deposes and says:

1. I am the son of the defendant Thomas Green and the father of Gina Green. I currently reside at 30 Hawthorne Street, Selden, New York 11784.
2. Although my name was placed on the witness list as a prospective witness, I was never interviewed by my father's trial counsel. I am one of the very few people with actual and complete knowledge of my daughter's entire life, including the time period at issue, and the fact that my daughter was not friends with Barbara Monaco and Kerri Peterson during the time period from 1998 through 1999. During the trial, when I asked trial counsel whether he was going to have me testify, trial counsel informed me

that he was not going to put me on the witness stand because I was "too angry."

3. Trial counsel never inquired of me whether I had any evidence that could establish the date of People's Exhibit 18 (the Halloween photograph) that Barbara Monaco testified as having been taken during Halloween 1998. (Exhibit 1).

4. I was excluded from the courtroom (because I was on the witness list), and did not see People's Exhibit 18 until after the trial was over.

5. Had I been asked about People's Exhibit 18 and asked to provide a date for it, I would have provided the following Exhibits and testimony:

6. Annexed hereto as collective Exhibit 2 are color copies of actual 1998 Halloween photographs of me and my children. I was dressed as a construction worker. Gina was dressed as a Yankee baseball player. Deanna, who was born on September 12, 1996, and who appears as a toddler in the photograph, was dressed as a ladybug. Thomas Rosario Green, who was born on August 13, 1998, and appears as a small baby in the photograph, was dressed as Superman.

7. Annexed hereto as Exhibit 3 are the birth certificates for

Thomas Rosario Green and Deanna Assunta Green.

8. Annexed hereto as Exhibit 4 is a copy of a photograph that was taken during Halloween 2001. This photograph depicts Gina in the same "witch" costume in which she appears in People's Exhibit 18. My son, Thomas Green, who was three years old at the time, dressed as a scarecrow. My daughter, Deanna Green, who was five years old at the time, is dressed as Raggedy Ann.


THOMAS GREEN, JR.


EVELYN WERTHEIMER
Notary Public, State of New York
No. 01WE6152868
Qualified in Suffolk County
Commission Expires Sept. 25, 2010

Exhibit 1



PEOPLE'S
EXHIBIT

18 7/30/02

Exhibit 2

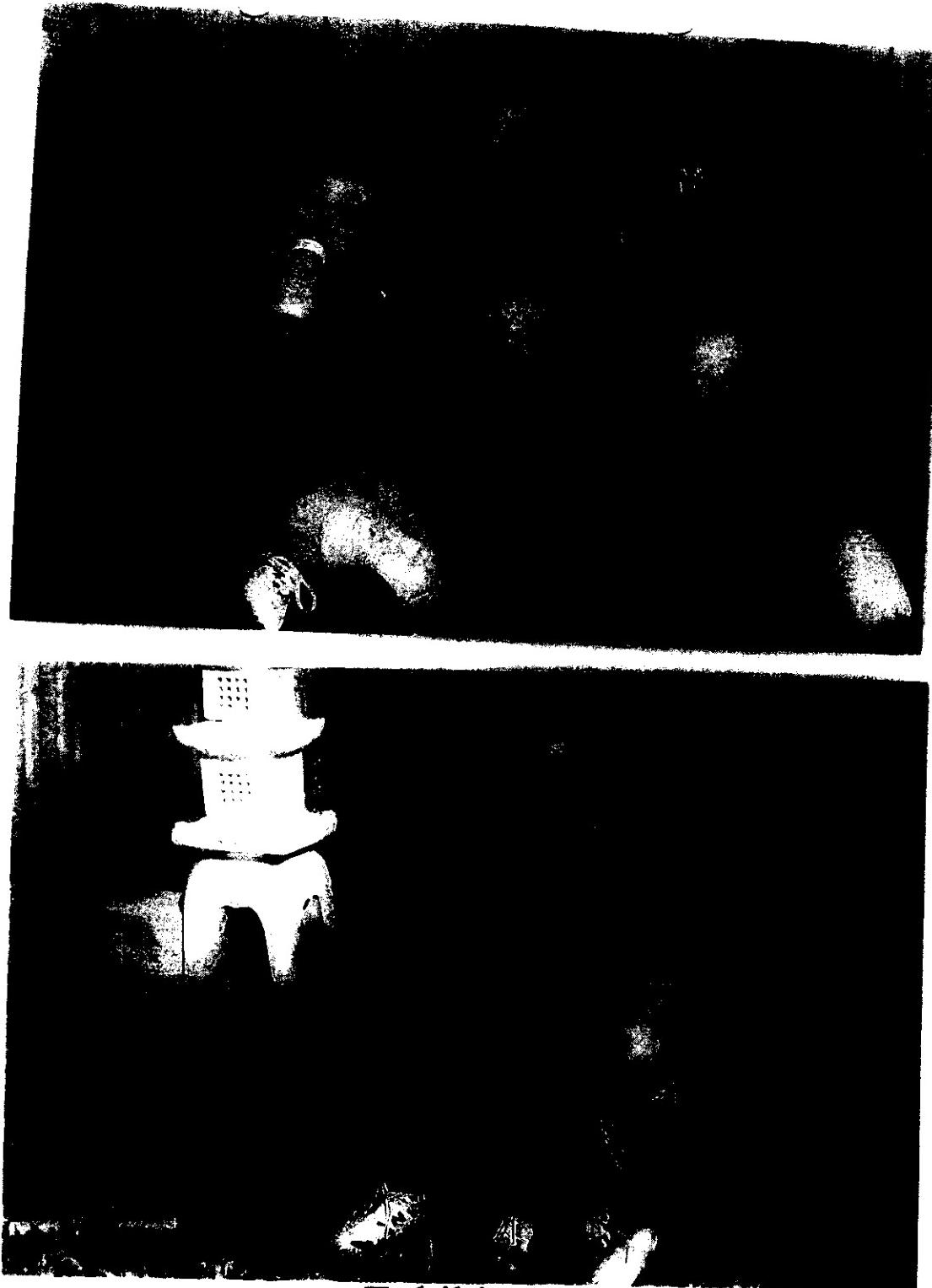


Exhibit 2

(Thomas Green, Jr. Affidavit)



Exhibit 2

(Thomas Green, Jr. Affidavit)



Exhibit 2

(Thomas Green, Jr. Affidavit)



Exhibit 2

(Thomas Green, Jr. Affidavit)



Exhibit 2

(Thomas Green, Jr. Affidavit)

Exhibit 3

CERTIFIED TRANSCRIPT OF BIRTH



L3764292

STATE OF NEW YORK

DEPARTMENT OF HEALTH

FULL NAME OF CHILD:

THOMAS ROSARIO GREEN

SEX: **Male**

DATE OF BIRTH: **08/13/1998**

TIME OF BIRTH: **03:03** [] A.M. P.M.

PLACE OF BIRTH: **Port Jefferson**, NEW YORK

MAIDEN NAME OF MOTHER: **Cindy Assunta DiBella**

NAME OF FATHER: **Thomas Francis Green**

DATE FILED: **09/11/1998**

LOCAL REGISTRATION NO.: **1236**

This is to certify that the information concerning the birth of the above named person is a true and accurate transcription of the information recorded on the original local certificate of birth on file with the local registrar of **PORT JEFFERSON**, New York.

Name of Locality

Carmela Mardi

Signature of Local Registrar

Date

11/19/2008

Do not accept this transcript unless the raised seal of the issuing locality is affixed thereon.

Any Alteration Invalidates This Certificate

See Reverse Side For A List of Security Features Used In This Form

DOH-2673 (9/2002)

CERTIFIED TRANSCRIPT OF BIRTH

STATE OF NEW YORK
DEPARTMENT OF HEALTH



L3784446

FULL NAME OF CHILD **DEANNA ASSUNTA GREEN**

SEX: **FEMALE**

DATE OF BIRTH: **09/12/1996**

TIME OF BIRTH **12:37** [] A.M. **[X]** P.M.

PLACE OF BIRTH: **STONY BROOK**, NEW YORK

MAIDEN NAME OF MOTHER: **CINDY ASSUNTA DIBELLA**

CERTIFIED TRANSCRIPT OF BIRTH

NAME OF FATHER: **THOMAS FRANCIS GREEN**

DATE FILED: **09/27/1996**

LOCAL REGISTRATION NO.: **1996002946**

This is to certify that the information concerning the birth of the above named person is a true and accurate transcription of the information recorded on the original local certificate of birth on file with the local registrar of **BROOKHAVEN**, New York.

Name of Locality:

Pamela J. Bobelik

Signature of Local Registrar

Date

11/19/2008

Do not accept this transcript unless the raised seal of the issuing locality is affixed thereon.

Any Alteration Invalidates This Certificate

See Reverse Side For A List of Security Features Used In This Form

DOH-2673 (9/2002)

Exhibit 4

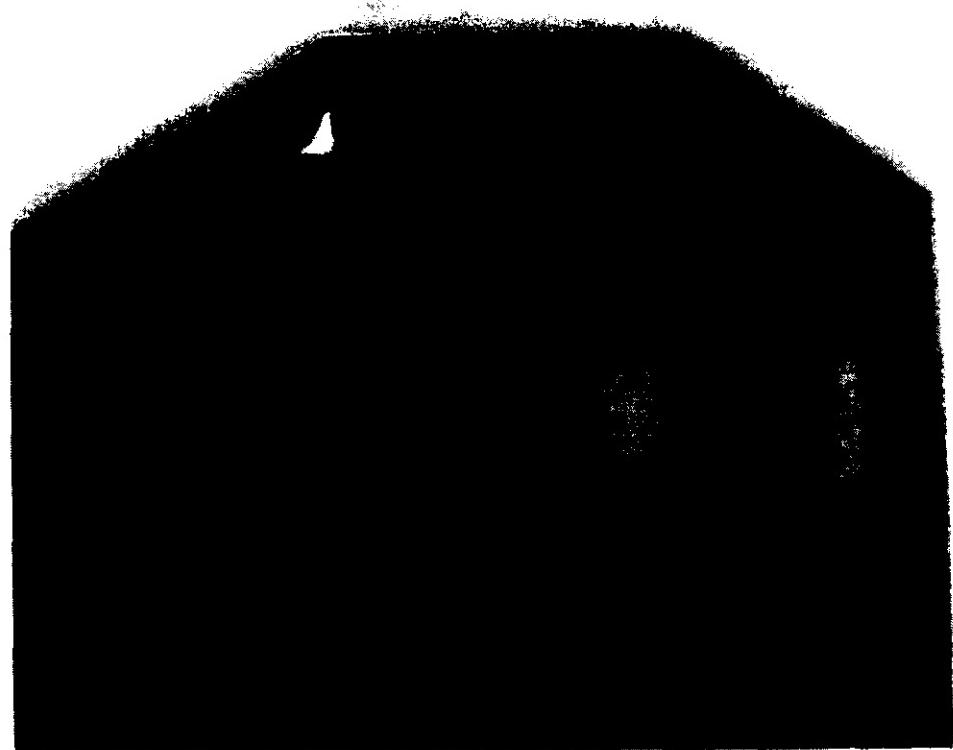


Exhibit 4

(Thomas Green, Jr. Affidavit)

Exhibit N



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Nov 4 03:44:16 EST 2008

TESS HOME	NEW USER	STRUCTURED	FREE FORM	Browser Dict.	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

 Please logout when you are done to release system resources allocated for you.

 List At:
OR to record:**Record 1 out of 3**

TARR Status	ASSIGN Status	TDR	TTAB Status	(Use the "Back" button of the Internet Browser to return to TESS)
-----------------------------	-------------------------------	---------------------	-----------------------------	--

Typed Drawing

Word Mark	TURBO TWIST
Goods and Services	IC 028. US 022 023 038 050. G & S: Electronic handheld teaching game machines that teach children spelling, mathematics, science, music, history, geography and literature. FIRST USE: 20000825. FIRST USE IN COMMERCE: 20000825
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75916584
Filing Date	February 11, 2000
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 16, 2001
Registration Number	2534765
Registration Date	January 29, 2002
Owner	(REGISTRANT) LEAPFROG ENTERPRISES, INC. CORPORATION DELAWARE 6401 Hollis Street Suite 100 Emeryville CALIFORNIA 94608
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Anna Silva
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead	

Indicator LIVE



[.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 2534765 SERIAL NO: 75/916584 MAILING DATE: 07/03/2007
REGISTRATION DATE: 01/29/2002
MARK: TURBO TWIST
REGISTRATION OWNER: LEAPFROG ENTERPRISES, INC.

CORRESPONDENCE ADDRESS:

Anna Silva
LeapFrog Enterprises, Inc.
6401 Hollis St.
Suite 100
Emeryville CA 94608

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF ACKNOWLEDGEMENT

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065. ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
028.

ROBERTS, SHARON YVONNE
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION
ORIGINAL

REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION) SECTION 8: AFFIDAVIT OF CONTINUED USE The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration. **Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**

II) SECTION 9: APPLICATION FOR RENEWAL The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration. **Failure to file the Application for Renewal will result in the expiration of the registration.**

NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

REGISTRATION NUMBER	2534765
REGISTRATION DATE	01/29/2002
SERIAL NUMBER	75916584
MARK SECTION	
MARK	TURBO TWIST
OWNER SECTION (current)	
NAME	LEAPFROG ENTERPRISES, INC.
STREET	6401 Hollis Street Suite 100
CITY	Emeryville
STATE	California
ZIP/POSTAL CODE	94608
COUNTRY	US
OWNER SECTION (proposed)	
NAME	LEAPFROG ENTERPRISES, INC.
STREET	6401 Hollis Street Suite 100
CITY	Emeryville
STATE	California
ZIP/POSTAL CODE	94608
COUNTRY	US
PHONE	510-420-5000
FAX	510-420-5011
EMAIL	trademarks@leapfrog.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
ATTORNEY SECTION (current)	
NAME	Anna Silva
FIRM NAME	LeapFrog Enterprises, Inc.
INTERNAL ADDRESS	6401 Hollis St.
STREET	Suite 100
CITY	Emeryville
STATE	California
ZIP/POSTAL CODE	94608
COUNTRY	United States
PHONE	510-420-5000
FAX	510-420-5011
EMAIL	trademarks@leapfrog.com
ATTORNEY SECTION (proposed)	
NAME	Anna Silva

6401 Hollis St.

FIRM NAME INTERNAL ADDRESS	LeapFrog Enterprises, Inc. 6401 Hollis St.
STREET	Suite 100
CITY	Emeryville
STATE	California
ZIP/POSTAL CODE	94608
COUNTRY	United States
PHONE	510-420-5000
FAX	510-420-5011
EMAIL	trademarks@leapfrog.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	028
FILING COVERS ALL GOODS OR SERVICES IN THIS CLASS	YES
SPECIMEN FILE NAME(S)	WTICRS2\EXPORT13\759\165\75916584\xml\1\8150002.JPG
SPECIMEN DESCRIPTION	photo of a handheld electronic teaching game machine
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL AMOUNT	300
SIGNATURE SECTION	
SIGNATURE	/anna silva/
SIGNATORY'S NAME	Anna Silva
SIGNATORY'S POSITION	Intellectual Property Counsel
DATE SIGNED	05/31/2007
PAYMENT METHOD	DA
FILING INFORMATION	
SUBMIT DATE	Thu May 31 18:29:30 EDT 2007
TEAS STAMP	USPTO/S08N15-63.114.26.14 -20070531182930365830-253 4765-370f1659b6d95a5107df 6112ee4e77aa6-DA-2449-200 70531182434076785

Combined Declaration of Use and Incontestability Under Sections 8 & 15
To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2534765
REGISTRATION DATE: 01/29/2002

MARK: TURBO TWIST

For International Class 028, the owner, or its related company, is using the mark in commerce on or in connection with all goods or services listed in the existing registration for this class; and, the owner, or its related company, has continuously used the mark in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with all goods or services listed in the existing registration for this class. Also, there has been no final decision adverse to the owner's claim of ownership of such mark for those goods or services, or to the owner's right to register the same or to keep the same on the register; and, there is no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) photo of a handheld electronic teaching game machine.

Specimen-1

The registrant hereby appoints Anna Silva of LeapFrog Enterprises, Inc., 6401 Hollis St., Suite 100, Emeryville, California United States 94608 to file this Combined Declaration of Use and Incontestability Under Sections 8 & 15 on behalf of the registrant.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /anna silva/ Date: 05/31/2007

Signatory's Name: Anna Silva

Signatory's Position: Intellectual Property Counsel

Mailing Address:

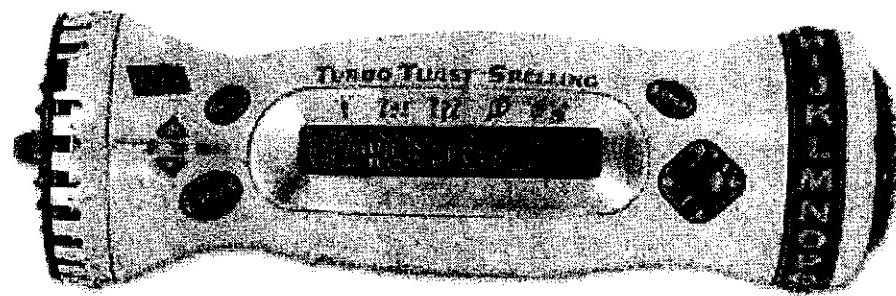
LeapFrog Enterprises, Inc.
Suite 100
Emeryville, California 94608

Mailing Address:

LeapFrog Enterprises, Inc.
Suite 100
Emeryville, California 94608

Serial Number: 75916584

Internet Transmission Date: Thu May 31 18:29:30 EDT 2007
TEAS Stamp: USPTO/S08N15-63.114.26.14-20070531182930
365830-2534765-370f1659b6d95a5107df6112e
e4e77aa6-DA-2449-20070531182434076785



ROUTING SHEET TO POST REGISTRATION (PRU)

Registration Number: 2534765



Serial Number: 75916584



RAM Sale Number: 2449

RAM Accounting Date: 20070601

Total Fees: \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20070531	\$100	1	1	\$100
§15 affidavit	7208	20070531	\$200	1	1	\$200

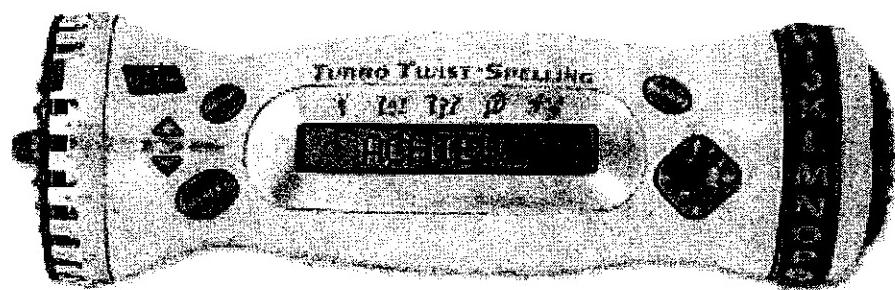
Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

Transaction Date: 20070531





75916584

TRADEMARK

75916584

New Corp

JUL 12 2000

Law Office 110

PROSECUTION HISTORY

Entry	Date	Initials
1.		
2.		
3 NOP		
4 1/16/01		
5.		
6.		
7. NOA		
8. 04-10-01	EXT RECD FILED EXCARGO AD	36
9.		
10.	SOU FILED	82
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		

See inside of file for additional entries.

Post Registration

Section 15
Acknowledged (Signature)

Cancelled - Section 8
(Date)

**Expired - Section 9
(Date)**

FORM PTO-102
59

REG NUM: 2534765
REG DT: 01/29/2002
S/N 75/916584

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

75-916584



FILING DATE
February 11, 2000

ORIGINAL APPLICANT

Knowledge Kids Enterprises, Inc.

GOODS/SERVICES (CLASS 028)

electronic handheld units that teach children (T.O.)

FILING BASIS

TTE

ORIGINAL CORRESPONDENT

KAREN M. WILHELM

TURBO TWIST

TURBO TWIST

PRINCIPAL

Knowledge Kids Enterprises, Inc.

LAW OFFICE 107722

ATTORNEY ADVISOR:

75-916584 +

PUBLISHED
1/16/01

Cooley Godward LLP



10-22-2001

U.S. Patent & TMOfc/TM Mail Rcp't Dt #76

October 17, 2001

VIA FIRST CLASS MAIL

Assistant Commissioner for Trademarks
Box ITU FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

ATTORNEYS AT LAW	Broomfield, CO 720 566 4000
One Marijuze Plaza	Denver, CO 303 606 4800
20th Floor	Kirkland, WA 425 893-7700
San Francisco, CA	Menlo Park, CA 650 843-5100
94111-3580	Palo Alto, CA 650 843-5000
Main 415 693-2000	Reston, VA 703 262 8000
Fax 415 951-3699	San Diego, CA 858 550-6000
www.cooley.com	

DEBORAH A. DAVIS
415 693-2168
ddavis@cooley.com

**Re: Statement of Use for Trademark Application
Our File: LeapFrog Enterprises, Inc./TURBO TWIST/U.S., Class 28
Our Reference: 123021-254**

Dear Assistant Commissioner:

Enclosed please find a Statement of Use for the following trademark application:

Applicant: LeapFrog Enterprises, Inc., formerly known
as Knowledge Kids Enterprises, Inc.
Mark: TURBO TWIST
Serial No.: 75-916.584

Applicant changed its name from Knowledge Kids Enterprises, Inc. to LeapFrog Enterprises, Inc., effective February 1, 2001. The assignment is recorded at Reel/Frame No. 2280/0074 and is enclosed for your convenience.

Also enclosed is a check in the amount of \$100.00 which is the required fee for filing this document. Please charge any deficiency or credit any overpayment of this fee to Deposit Account No. 03-3118. A duplicate copy of this letter as authorization is attached for your convenience.

Very truly yours,

COOLEY GODWARD LLP

Deborah A. Davis

DAD:dlm

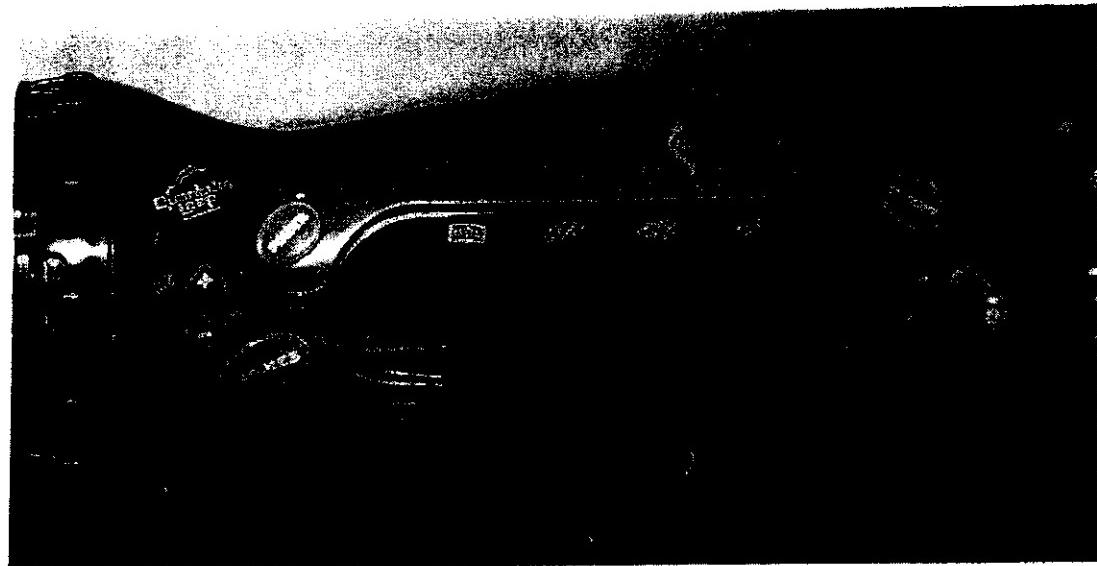
Enclosures

cc: Pepi Ross, Esq. (w/encl.)
Susan C. Philpot, Esq. (w/o encl.)
Kathryn M. Wheble, Esq. (w/encl.)

695863

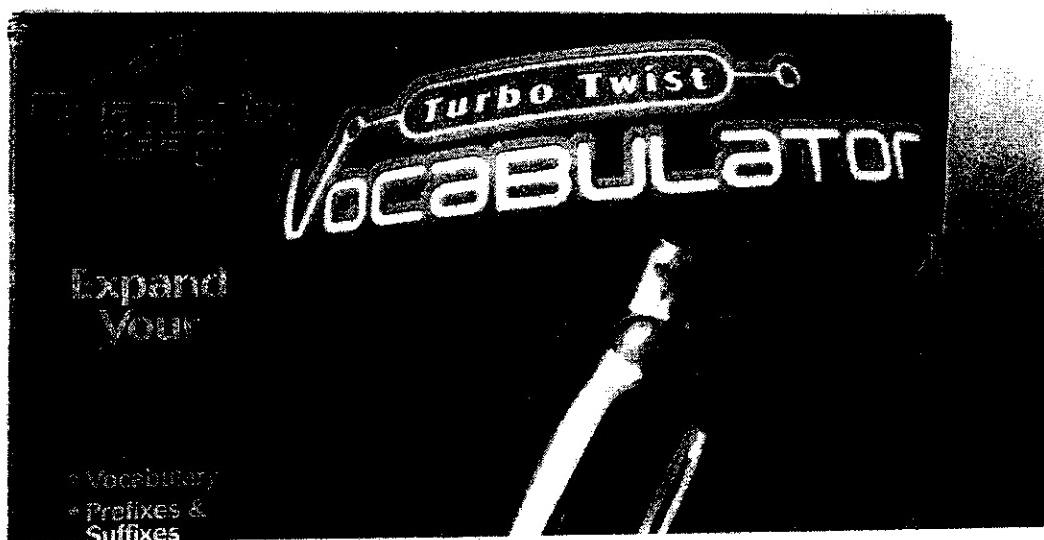
TURBO TWIST 75/916,584

Specimen



TURBO TWIST 75/916,584

Specimen



AMENDMENT STAGE NO CHANGE PUBLICATION/REGISTRATION STAGEName: **CHRISTINE TAYLOR**

L.O. 112

Serial No.

75/916584

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/codified.

Legal Instrument Examiner

	Amended	Data Element	
Class Data	<input type="checkbox"/>	Prime/International Class	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	First Use Date	<input type="checkbox"/> First Use in Commerce Date
	<input type="checkbox"/>	In Another Form	<input type="checkbox"/> Certification
	<input type="checkbox"/> 1b		
Mark Data	<input type="checkbox"/>	Word Mark	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input type="checkbox"/>	Scan Sub Drawing	
Misc. Mark Data	<input type="checkbox"/>	Mark Description	<input type="checkbox"/> Disclaimer
	<input type="checkbox"/>	Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	Translation	
Section 2(f)	<input type="checkbox"/>	Section 2(f) Entire Mark	
	<input type="checkbox"/>	Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	Amended Register	<input type="checkbox"/> AmendeRegister Date
Foreign Reg. Data	<input type="checkbox"/>	Foreign Country	<input type="checkbox"/> 44(d)
	<input type="checkbox"/>	Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input type="checkbox"/>	Owner Name	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	Address 1	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	City	<input type="checkbox"/> State
	<input type="checkbox"/>	Zip Code	
	<input type="checkbox"/>	Citizenship	<input type="checkbox"/> Entity
	<input type="checkbox"/>	Entity Statement	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	Assignment(s)/Name Change	
Amd/Corr Restr.	<input type="checkbox"/>	Concurrent Use	
Prior U.S. Reg.	<input type="checkbox"/>	Prior Registration	
Correspondence	<input type="checkbox"/>	Attorney	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	Attorney Docket Number	
	<input type="checkbox"/>	Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

SLIE
Other:

CHRISTINE TAYLOR

DATE

11/26/2001



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JULY 03, 2001

PTAS



101688127A

COOLEY GODWARD LLP
KATHRYN M. WHEELER, ESQ.
ONE MARITIME PLAZA, 20TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3580

RECEIVED

JULY 09 2001

FILED

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 04/11/2001

REEL/FRAME: 002280/0074
NUMBER OF PAGES: 6

BRIEF: CHANGE OF NAME

ASSIGNOR:

KNOWLEDGE KIDS ENTERPRISES, INC.

DOC DATE: 02/01/2001
CITIZENSHIP: DELAWARE
ENTITY: CORPORATION

ASSIGNEE:

LEAPFROG ENTERPRISES, INC.
6401 HOLLIS STREET, SUITE 150
EMERYVILLE, CALIFORNIA 94608CITIZENSHIP: DELAWARE
ENTITY: CORPORATIONAPPLICATION NUMBER: 75693801
REGISTRATION NUMBER:FILING DATE: 04/29/1999
ISSUE DATE:MARK: ALPHABET PAL
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORMAPPLICATION NUMBER: 75239375
REGISTRATION NUMBER:FILING DATE: 02/10/1997
ISSUE DATE:MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

Entered in Trademark Docket	
By:	Date: 7-17-01
Action Due:	Notify Evan Bran
Due Date:	7-1-01
Reviewed by:	d

COPY

002280/0074 PAGE 2

APPLICATION NUMBER: 75239399
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75239425
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75239516
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75239538
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75240078
REGISTRATION NUMBER: 2448032

FILING DATE: 02/10/1997
ISSUE DATE: 05/01/2001

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75238938
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75410344
REGISTRATION NUMBER:

FILING DATE: 12/23/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75239546
REGISTRATION NUMBER:

FILING DATE: 02/10/1997
ISSUE DATE:

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75645900
REGISTRATION NUMBER:

FILING DATE: 02/19/1999
ISSUE DATE:

MARK: LEAPFROG LEAPPAD
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

COPY

002280/0074 PAGE 3

APPLICATION NUMBER: 76197255
REGISTRATION NUMBER:

FILING DATE: 01/19/2001
ISSUE DATE:

MARK: LEAPFROG LEARNING POND
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76197256
REGISTRATION NUMBER:

FILING DATE: 01/19/2001
ISSUE DATE:

MARK: LEAPFROG LEARNING POND
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76175391
REGISTRATION NUMBER:

FILING DATE: 11/30/2000
ISSUE DATE:

MARK: LEAPFROG SCHOOLHOUSE
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76175320
REGISTRATION NUMBER:

FILING DATE: 11/30/2000
ISSUE DATE:

MARK: LEAPFROG SCHOOLHOUSE
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75764192
REGISTRATION NUMBER:

FILING DATE: 07/30/1999
ISSUE DATE:

MARK: LEAPFROG SCHOOLHOUSE
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76129744
REGISTRATION NUMBER:

FILING DATE: 09/15/2000
ISSUE DATE:

MARK: LEAPLINK
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75645939
REGISTRATION NUMBER:

FILING DATE: 02/19/1999
ISSUE DATE:

MARK: LEAPPAD
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76177320
REGISTRATION NUMBER:

FILING DATE: 12/07/2000
ISSUE DATE:

MARK: LEAP'S PHONICS POND
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75916117
REGISTRATION NUMBER:

FILING DATE: 02/11/2000
ISSUE DATE:

MARK: LEAPZONE
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

COPY

002280/0074 PAGE 4

APPLICATION NUMBER: 75916589
REGISTRATION NUMBER:

FILING DATE: 02/11/2000
ISSUE DATE:

MARK: LEAPZONE

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75938867
REGISTRATION NUMBER:

FILING DATE: 03/08/2000
ISSUE DATE:

MARK: MINDLINK

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75445409
REGISTRATION NUMBER: 2455717

FILING DATE: 02/27/1998
ISSUE DATE: 05/29/2001

MARK: THINK & GO

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75916584
REGISTRATION NUMBER:

FILING DATE: 02/11/2000
ISSUE DATE:

→ MARK: TURBO TWIST

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75437996
REGISTRATION NUMBER: 2453490

FILING DATE: 02/20/1998
ISSUE DATE: 05/22/2001

MARK: TWIST & SHOUT

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76083941
REGISTRATION NUMBER:

FILING DATE: 07/05/2000
ISSUE DATE:

MARK: WEBFROG

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75430319
REGISTRATION NUMBER: 2406699

FILING DATE: 02/06/1998
ISSUE DATE: 11/21/2000

MARK: FLASH MAGIC

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75444999
REGISTRATION NUMBER: 2300772

FILING DATE: 03/05/1998
ISSUE DATE: 12/14/1999

MARK: HUG & LEARN

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75238939
REGISTRATION NUMBER: 2211682

FILING DATE: 02/10/1997
ISSUE DATE: 12/15/1998

MARK: LEAPFROG

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

COPY

002280/0074 PAGE 5

APPLICATION NUMBER: 74635980
REGISTRATION NUMBER: 2120195

FILING DATE: 02/17/1995
ISSUE DATE: 12/09/1997

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75351148
REGISTRATION NUMBER: 2264123

FILING DATE: 09/03/1997
ISSUE DATE: 07/27/1999

MARK: LEAPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75350979
REGISTRATION NUMBER: 2284485

FILING DATE: 09/03/1997
ISSUE DATE: 10/12/1999

MARK: LEAP FROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 74635811
REGISTRATION NUMBER: 2169827

FILING DATE: 02/17/1995
ISSUE DATE: 06/30/1998

MARK: LEAP FROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 73435765
REGISTRATION NUMBER: 1294594

FILING DATE: 07/22/1983
ISSUE DATE: 09/11/1984

MARK: LEAP FROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 73457270
REGISTRATION NUMBER: 1306993

FILING DATE: 12/14/1983
ISSUE DATE: 11/27/1984

MARK: LEAPFROG SERIES LIMITED VOCABULARY
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 75444977
REGISTRATION NUMBER: 2388261

FILING DATE: 03/05/1998
ISSUE DATE: 09/19/2000

MARK: LITTLE COMPOSER
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75463815
REGISTRATION NUMBER: 2294754

FILING DATE: 04/07/1998
ISSUE DATE: 11/23/1999

MARK: LITTLE LEAP
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75173519
REGISTRATION NUMBER: 2206377

FILING DATE: 09/30/1996
ISSUE DATE: 12/01/1998

MARK: PHONICS BUS
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

COPY

002280/0074 PAGE 6

APPLICATION NUMBER: 75173520
REGISTRATION NUMBER: 2206378

FILING DATE: 09/30/1996
ISSUE DATE: 12/01/1998

MARK: PHONICS DESK
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75173521
REGISTRATION NUMBER: 2119426

FILING DATE: 09/30/1996
ISSUE DATE: 12/09/1997

MARK: PHONICS TRAVELER
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

ALLYSON PURNELL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

COPY

CORDATION FORM COVER SHEET
TRADEMARKS ONLYU.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101688127

Patents and Trademarks. Please record the attached original documents or copy thereof.

(MRI)

4.11.01

1. Name of conveying party(ies):

Knowledge Kids Enterprises, Inc.

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State Delaware
 Other _____

Additional name(s) of conveying party(ies) attached? No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: February 1, 2001

2. Name and address of receiving party(ies):

Name: LeapFrog Enterprises, Inc.Street Address: 6401 Hollis Street, Suite 150City: Emeryville State: California ZIP: 94608

- Individual(s) citizenship
 Association
 General Partnership
 Limited Partnership
 Corporation-State Delaware
 Other _____

APR 11 2001

If assignee is not domiciled in the United States, a domestic representative designation is attached:

- Yes No

(Designation must be a separate document from Assignment).
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

26 applications – please see attached

B. Trademark Registration No.(s)

14 registrations – please see attached

Additional numbers attached? Yes

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kathryn M. Wheble, Esq.Internal Address: Cooley Godward LLPStreet Address: One Maritime Plaza, 20th FloorCity: San Francisco State: California ZIP 94111-35806. Total number of applications and registrations involved: 407. Total fee (37 CFR 3.41): \$1,015.00

- Enclosed

- Authorized to be charged to deposit account

8. Deposit account number:

please charge discrepancy or credit overpayment to 03-3118(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kathryn M. Wheble

4-9-01

Date

Total number of pages including cover letter, cover sheet, attachments, and document: Eight (includes check)

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

04/25/2001 DRSNE 00000069 75693801

40.00 0P
975.00 0P01 F01481
02 F01482633880 v1/SF
DL3S01.DOC

COPY

LEAPFROG ENTERPRISES, INC.

PENDING APPLICATIONS

MARK	APPLICATION NO.
ALPHABET PAL	75/693,801
LEAPFROG	75/239,375
LEAPFROG	75/239,399
LEAPFROG	75/239,425
LEAPFROG	75/239,516
LEAPFROG	75/239,538
LEAPFROG	75/240,078
LEAPFROG	75/238,938
LEAPFROG	75/410,344
LEAPFROG	75/239,546
LEAPFROG LEAPPAD	75/645,900
LEAPFROG LEARNING POND	76/197,255
LEAPFROG LEARNING POND	76/197,256
LEAPFROG SCHOOLHOUSE	76/175,391
LEAPFROG SCHOOLHOUSE	76/175,320
LEAPFROG SCHOOLHOUSE	75/764,192
LEAPLINK	76/129,744
LEAPPAD	75/645,939
LEAP'S PHONICS POND	76/177,320
LEAPZONE	75/916,117
LEAPZONE	75/916,589
MINDLINK	75/938,867
THINK & GO	75/445,409
TURBO TWIST	75/916,584
TWIST & SHOUT	75/437,996
WEBFROG	76/083,941

LEAPFROG ENTERPRISES, INC.

REGISTERED MARKS

MARK	REGISTRATION NO.
FLASH MAGIC	2,406,699
HUG & LEARN	2,300,772
LEAPFROG	2,211,682
LEAPFROG	2,120,195
LEAPFROG	2,264,123
LEAP FROG and Design	2,284,485
LEAP FROG and Design	2,169,827
LEAP FROG and Design	1,294,594
LEAPFROG SERIES LIMITED VOCABULARY and Design	1,306,993
LITTLE COMPOSER	2,388,261
LITTLE LEAP	2,294,754
PHONICS BUS	2,206,377
PHONICS DESK	2,206,378
PHONICS TRAVELER	2,119,426

COPY

State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "KNOWLEDGE KIDS ENTERPRISES, INC.", CHANGING ITS NAME FROM "KNOWLEDGE KIDS ENTERPRISES, INC." TO "LEAPFROG ENTERPRISES, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF FEBRUARY, A.D. 2001, AT 11 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2780677 6100

010053093



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 0949871

DATE: 02-01-01

COPY

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF

KNOWLEDGE KIDS ENTERPRISES, INC.

Knowledge Kids Enterprises, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation by the unanimous written consent of its members, filed with the minutes of the board, adopted a resolution proposing and declaring advisable the following amendment to the Amended and Restated Certificate of Incorporation of said corporation:

NOW, THEREFORE, BE IT RESOLVED, that the Amended and Restated Certificate of Incorporation be amended by changing Article I thereof so that, as amended, said Article I shall read in its entirety as follows:

"The name of the corporation (the "Corporation") is:

LEAPFROG ENTERPRISES, INC."

SECOND: That in lieu of a meeting and vote of stockholders entitled to vote, the holder of a majority of the shares entitled to vote has given written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09/06 AM 02/03/2000
61006393 - 2700677

COPY

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Knowledge Kids Enterprises, Inc. has caused this certificate to be signed by Stanley E. Maron, its Secretary, this 1st day of February, 2001.

KNOWLEDGE KIDS ENTERPRISES, INC.

By:



STANLEY E. MARON, Secretary

COPY

RAM Fee History
Query
Revenue Accounting and Management

Name/Number: 75916584

Total Records Found: 4

Start Date: Any Date

End Date: Any Date

Accounting Date	Sequence Num.	Tran Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
02/17/2000	00000103	<u>0</u>	<u>361</u>	\$325.00	02/11/2000	OP
09/15/2000	00000045	<u>3</u>	<u>466</u>	\$15.00	09/15/2000	OP
10/22/2001	00000008	<u>0</u>	<u>364</u>	\$150.00	10/15/2001	OP
10/24/2001	00000280	<u>0</u>	<u>363</u>	\$100.00	10/22/2001	OP

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid in an envelope addressed to: Assistant Commissioner for Trademarks, BOX ITU - FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.

 (Name)

10-10-01 (Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION**

In Re the Trademark Application:

Serial No.: 75/916,584

Applicant: LeapFrog Enterprises, Inc.

Trademark: TURBO TWIST

Notice of Allowance

Mailing Date: April 10, 2001

EXT REQ GRANTED

10-17-01

SAC

Assistant Commissioner for Trademarks
BOX ITU - FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

**FIRST REQUEST FOR EXTENSION OF TIME UNDER 37 C.F.R.
§ 2.89 TO FILE A STATEMENT OF USE**

Applicant, LeapFrog Enterprises, Inc., formerly known as Knowledge Kids Enterprises, Inc., requests a six-month extension of time within which to file the Statement of Use under 37 C.F.R. § 2.89 in the above-captioned application.

Applicant has a continued *bona fide* intention to use the mark in commerce in connection with those goods identified in the Notice of Allowance in this application.

This is the First Request For Extension of Time following the mailing of the Notice of Allowance.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that she is properly authorized to execute this Request for Extension of Time to File a Statement of Use on behalf of the applicant; she believes the applicant to be the owner of the mark sought to be registered; and that all statements made of her own knowledge are true and all statements made on information and belief are believed to be true.

LeapFrog Enterprises, Inc.

Date: 10/10/01

By: DAD

Deborah A. Davis
Attorney for Applicant
Cooley Godward, LLP
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580
Telephone: 415/693-2000

Cooley Godward LLP
San Francisco General Account

No. 401194

DATE	DESCRIPTION	AMOUNT
10/10/01	Assistant Commissioner for Trademarks 009002 *0	150.00
10/09/01	123021-254/ Extension Request - TURBO TWIST	150.00

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND ON THE FACE AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

BANK OF AMERICA NT&SA
San Francisco Regional
Commercial Banking Office 1499
345 Montgomery St
San Francisco, CA 94104

75/116, 584
extension request

Cooley Godward LLP

No. 401194

11-35
1210

ATTORNEYS AT LAW
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580

DATE
10/10/01

AMOUNT
\$150.00

PAY EXACTLY: \$150 DOLLARS AND 00 CENTS

PAY
TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS
ORDER U.S. PATENT AND TRADEMARK OFFICE
OF ARLINGTON VA 22202-3513

Cooley Ne

COUNTERSIGN OVER \$5,000.00

Cooley Godward LLP
San Francisco General Account
THIS CHECK HAS A COLORED BACKGROUND & BORDER CONTAINS AN OPTICAL FINGERPRINT

401194# 1123000358# 14997# 50919#

Applicant: Lamp Frog Enterprises, Inc.
Mark: TURBO TWIST
Ser/Reg No: 75/916,584
Our File: Lamp Frog Enterprises, Inc./
TURBO TWIST / U.S. CLASS 28
Express Mail No: 1st Class Mail

Date Mailed: 10-10-01

Opp No:

C/M No: 123021-254

Atty/Sec'y: DAD: atm: lm

- The following has been received in the U.S. Patent and Trademark Office on the date stamped herein:
- Transmittal Letter Amendment to Allege Use
 Trademark Application, ___ pgs Declaration Under Sections 8 and 15
 Service Mark Application, ___ pgs Recordation of Trademark Assignment Cover Sheet
 Response to Office Action No. ___ Statement of Use with 3 Specimens
 Request for Extension of Time 3 Specimens Enclosed

Check No. 401194 for \$ 150.00

Other: _____

Cooley Godward LLP

October 10, 2001

VIA FIRST CLASS MAIL

Assistant Commissioner for Trademarks
Box ITU FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

ATTORNEYS AT LAW
Broomfield, CO
720 566-4000
Denver, CO
303 606-4800
One Maritime Plaza
20th Floor
San Francisco, CA
94111-3580
Main 415 693-2000
Fax 415 951-3699
Kirkland, WA
425 893-7700
Menlo Park, CA
650 843-5100
Palo Alto, CA
650 843-5000
Reston, VA
703 262-8000
San Diego, CA
858 550-6000
www.cooley.com

DEBORAH A. DAVIS
415 693-2168
ddavis@cooley.com

Re: Request for Extension of Time to File a Statement of Use for Trademark Application
Our File: LeapFrog Enterprises, Inc./TURBO TWIST/U.S., Class 28
Our Reference: 123021-254

Dear Assistant Commissioner:

Enclosed please find a Request for Extension of Time to File a Statement of Use for the following trademark application:

Applicant: LeapFrog Enterprises, Inc., formerly known as Knowledge Kids Enterprises, Inc.
Mark: TURBO TWIST
Serial No.: 75/916,584

Applicant changed its name from Knowledge Kids Enterprises, Inc. to LeapFrog Enterprises, Inc., effective February 1, 2001. The assignment is recorded at Reel/Frame No. 2280/0074.

Also enclosed is a check in the amount of \$150.00 which is the required fee for filing this document. Please charge any deficiency or credit any overpayment of this fee to Deposit Account No. 03-3118. A duplicate copy of this letter as authorization is attached for your convenience.

Very truly yours,

COOLEY GODWARD LLP

Deborah A. Davis

DAD:djm

Enclosures

cc: Pepi Ross, Esq. (w/encl.)
Susan C. Philpot, Esq. (w/o encl.)
Kathryn M. Wheble, Esq. (w/encl.)

693721

Entered in Trademark Office
By: <u>gg</u> Date: <u>10-12-01</u>
Action Due: <u>Sep 05 ext</u>
Due Date: <u>11-12-01</u>
Reviewed by: <u>d</u>



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JULY 03, 2001

PTAS



101688127A

COOLEY GODWARD LLP
KATHRYN M. WHEELER, ESQ.
ONE MARITIME PLAZA, 20TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3580

RECEIVED

JULY 09 2001

FILED

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 04/11/2001

REEL/FRAME: 002280/0074

NUMBER OF PAGES: 6

BRIEF: CHANGE OF NAME

ASSIGNOR:

KNOWLEDGE KIDS ENTERPRISES, INC.

DOC DATE: 02/01/2001

CITIZENSHIP: DELAWARE

ENTITY: CORPORATION

ASSIGNEE:

LEAPFROG ENTERPRISES, INC.
6401 HOLLIS STREET, SUITE 150
EMERYVILLE, CALIFORNIA 94608

CITIZENSHIP: DELAWARE

ENTITY: CORPORATION

APPLICATION NUMBER: 75693801
REGISTRATION NUMBER:

FILING DATE: 04/29/1999

ISSUE DATE:

MARK: ALPHABET PAL
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75239375
REGISTRATION NUMBER:

FILING DATE: 02/10/1997

ISSUE DATE:

MARK: LEAPPFROG
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

Entered in Trademark Docket
By: <u>7-17-01</u>
Action Due: Notify Exam Branch
Due Date: <u>7-1-01</u>
Reviewed by: <u>D</u>

COPY